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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/314,593      | 05/19/1999  | DALE C. TONOGAI      | M-7547-US           | 5429             |

34036 7590 10/27/2003

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| EXAMINER |
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VANDERPUYE, KENNETH N

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| ART UNIT | PAPER NUMBER |
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2661

DATE MAILED: 10/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/314,593

Applicant(s)

TONOGAI, DALE C.

Examiner

Kenneth N Vanderpuye

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-14, 16-35 and 39-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 10-14, 16-35 and 69-73 is/are allowed.
- 6) ☒ Claim(s) 40-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### ***Claim Rejections - 35 U.S.C. § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 39, 58-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adelman et al.(4,950,534)

With regards to claim 58 Adelman teaches a method comprising: transmitting packets for a stream using an initial payload size(col. 7 lines 42-45, a variable rate encoder of a selected rate will affect the payload size), transmitting packets of an increased payload size(a variable rate encode of a different selected rate will change the payload size) in any response to an increase in processing requirements(encoding rate) and an increase in payload size of received packets(inherently taught) Although Adelman does not explain how encoding rate impacts payload size, the

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encoder in Adelman is a variable rate encoder hence the payload size will vary depending on the rate selected.

Claims 59-60, 62 are rejected because the decision to have increased payload sizes in a stream or new stream or a multiple thereof is obvious as a matter of design choice

Claim 61 is rejected because snippets represent blocks of data which also represent bytes of data. Hence the use of blocks of bytes of payload is also a matter of design choice.

Claim 39 is rejected for the same reasons as claim 61

***Allowable Subject Matter***


3. Claims 1-6, 10-13, 14, 16, 17-35, 69-73 are allowed.
4. Claims 40-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Vanderpuye whose telephone number is (703) 308-7828. The examiner can normally be reached on M-F from 6:30am to 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms, can be reached on (703) -305-4703.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.



**KENNETH VANDERPUYE**  
**PRIMARY EXAMINER**

Kenneth Vanderpuye

October 20, 2003